

Paper 1

Mail Stop Interference  
P.O. Box 1450  
Alexandria Va 22313-1450  
Tel: 571-272-4683  
Fax: 571-273-0042

Filed: June 12, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Merck Patent Gmbh,  
Junior Party  
(Application 10/239,566,  
Inventors: Friedrich Rippmann and Klaus Ducker),

v.

Lexicon Genetics Inc.,  
Senior Party  
(Patent 7,229,790  
Inventors: Carl Johan Friddle, Brenda Gerhardt, and Yi Hu).

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Patent Interference 105,594 (RES)  
Technology Center 1600

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DECLARATION - Bd.R. 203(d)<sup>1</sup>

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<sup>1</sup> "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1        An interference is declared (35 U.S.C. § 135(a)) between the above-  
2 identified parties. Details of the application(s), patent (if any), reissue application  
3 (if any), count and claims designated as corresponding or as not corresponding to  
4 the count appear in Parts E and F of this DECLARATION.

5        Part B. Judge managing the interference

6        Administrative Patent Judge Richard E. Schafer has been designated to  
7 manage the interference. 37 CFR § 41.104(a).

8        Part C. Standing order

9        A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this  
10 DECLARATION. The STANDING ORDER applies to this interference.

11        Part D. Initial conference call

12        A telephone conference call to discuss the interference is set for, 4:00 p.m.  
13 (EDT) on August 12, 2008 (the Board will initiate the call).

14        No later than two business days prior to the conference call, each party shall  
15 file and serve (SO ¶¶ 10.1 & 105) a list of the motions (37 CFR § 41.120 & 204;  
16 SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

17        A time periods for taking action during the motion phase are set in an order  
18 accompanying this declaration.

1           Part E. Identification and order of the parties

2           Junior Party

3           Named inventors:       Friedrich Rippmann  
4                                   Klaus Ducker

5           Involved Application: 10/239,566 filed September 24, 2002

6           Title:                  Identification Of Human Gaba Transporter

7           Assignee:              Merck Patent Gmbh

8           Senior Party

9           Named Inventors:     Carl Johan Friddle  
10                               Brenda Gerhardt  
11                               Yi Hu

12           Involved Patent :    7,229,790 based on Application 09/940,919 filed  
13                               August 28, 2001

14           Title:                Novel Human Gaba Transporter Protein And  
15                               Polynucleotides Encoding The Same

16           Assignee:            Lexicon Genetics Incorporated

17           The senior party is assigned exhibit numbers 1001-1999. The junior party is  
18           assigned exhibit numbers 2001-2999. 37 CFR § 41.154(c)(1); SO ¶ 154.2.1. The  
19           senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

1                   Part F. Count and claims of the parties

2                   Count 1

3                   Claim 1 of US Patent 7,229,790.

4                   Claim 1 of 7,229,790 is:

- 5                   1. An isolated nucleic acid molecule comprising a nucleotide  
6                   sequence that encodes the amino acid sequence shown in  
7                   SEQ ID NO:2.

8                   The claims of the parties are:

9                   Merck (Rippman) Application 10/239,566: Claims: 1-9 and 11

10                  Lexicon (Friddle) Patent 7,229,790: Claims: 1-5

11                  The claims of the parties that correspond to Count 1 are:

12                  Merck (Rippman) Application 10/239,566: Claims: 1-9 and 11

13                  Lexicon (Friddle) Patent 7,229,790: Claims: 1, 3, and 5

14                  The claims of the parties that do not correspond to Count 1, and therefore are  
15                  not involved in the interference, are:

16                  Merck (Rippman) Application 10/239,566: Claims: None

17                  Lexicon (Friddle) Patent 7,229,790: Claims: 2 and 4

18                  Benefit

19                  The parties are accorded the following benefit for Count 1:

20                  Merck (Rippman) Application 10/239,566: None

21                  Lexicon (Friddle) Patent 7,229,790:                 None

22                  Part G. Heading to be used on papers

23                  The following heading must be used on all papers filed in this interference,

24                  see SO § 106.1.1:

Paper Leave blank

Filed on behalf of: *Party* @.

By: *Counsel Name(s)* @

*Address* @

(@ @ @) @ @ @ - @ @ @ @ (telephone)

(@ @ @) @ @ @ - @ @ @ @ (facsimile)

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Technology Center 1600

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1 Part H. Order form for requesting file copies

2 When requesting copies of files, use of SO Form 4 will greatly expedite  
3 processing of the request. Please attach a copy of Parts E and F of this

- 1 DECLARATION with a hand-drawn circle around the patents and applications for
- 2 which a copy of a file wrapper is requested.

/Richard E. Schafer/  
Administrative Patent Judge

Enc:

Copy of STANDING ORDER  
Copy U.S. Patent 7,229,790  
Copy of claims of Application 10/239,566

Revised 3 January 2006

cc (via overnight delivery):

Attorney for Merck

Millen, White, Zelano & Branigan, P.C.  
2200 Clarendon Blvd.  
Suite 1400  
Arlington VA 22201

Attorney for Lexicon

Lance Ishimoto, Esq.  
Lexicon Genetics Incorporated  
8800 Technology Forest Place  
The Woodlands, TX 77381-1160